IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 23410 of 2007(J)

AGAINST THE ORDER IN EA.776/06,EP.463/02 IN OS.653/1993 of PRL.SUB COURT,KOTTAYAM

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PETITIONER:

K.J.GEORGE, KUZHIANKALAYIL HOUSE,
PARAMPUZHA KARA, PERUMBAYIKADU VILLAGE,
KOTTAYAM DISTRICT.

BY ADV. SRI.B.PREMOD

RESPONDENTS:

P.I.CHERIAN,
KOSAMATTOM PUTHENPURAYIL HOUSE,
VIJAYAPURAM VILLAGE, NATTASSERY,
KOTTAYAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.23410 OF 2007 J

Dated this the 31st July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order of the Subordinate Judge, Kottayam in E.A.776/06 in E.P.463/02 in O.S.653/03. The suit was filed in the year 1993 and the E.P amount in 1994 was Rs.8,86,005/-. The court below had ordered sale of 6 ares of land belonging to the judgment debtor. The court below has not violated the mandate of the provisions of the Civil Procedure Code. The court was prudent enough to appoint an expert for valuing the property as well as the house. The expert visited the property and estimated the land value at Rs.7.5 lakhs and Rs.7 lakhs for the building after deducting the depreciation. The present writ petitioner filed his counter holding that the property will fetch Rs.30 lakhs. The court below had directed the office to incorporate the objection raised by the judgment debtor as well. As per the new proviso of Order XXI Rule 66 there is no duty cast upon the court to fix the upset price it will be sufficient if the amount shown by the decree holder as well as the judgment debtor is incorporated in the draft proclamation. Then the other contention is a sale of a portion of the property will be sufficient. In that regard I may state

that the court had obtained a report from an expert commissioner and thereafter had assessed the value and the decree amount due will be Rs.8,86,005/- plus interest from 1994 onwards. So, the court has taken note of the amount that is due to the decree holder. The court had obtained an expert report regarding the valuation of the property. The court had incorporated the objection raised by the writ petitioner and therefore all the formalities that are necessary had been properly complied with and therefore, I do not find any mistake in the order of the learned Subordinate Judge which requires interference. Therefore the writ petition is dismissed.

M.N.KRISHNAN
Judge

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